

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

PNC BANK, NATIONAL ASSOCIATION,)	
)	
Plaintiff,)	
)	No. 4:13-CV-1073 CAS
v.)	
)	
EL TOVAR, INCORPORATED, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter came before the Court for hearing on plaintiff PNC Bank, National Association's motion for an order to show cause why the defendants, El Tovar, Incorporated and Steven D. Parrish, should not be held in contempt of Court for failure to comply with the Consent Order Appointing Receiver issued on November 4, 2013. By Memorandum and Order dated November 26, 2013, the Court ordered PNC Bank to present its evidence concerning the defendants' alleged violation of the Consent Order Appointing Receiver, and defendants El Tovar and Mr. Parrish to appear and show cause why they should not be held in contempt of Court.

The Court heard the testimony of the appointed Receiver, Mr. Shawn Henry, and the testimony of defendant Steven D. Parrish, as well as arguments and statements of counsel. The Court also reviewed the exhibits attached to plaintiff's Motion for Order to Show Cause. The defendants did not offer any exhibits.

As announced at the hearing in open court and on the record, the Court finds that plaintiff PNC Bank established by clear and convincing evidence that the defendants violated the Consent Order Appointing Receiver by failing to turn over to the Receiver all sums under their possession or control as of the date of the Consent Order Appointing Receiver or thereafter, representing

November 2013 rents and security deposits for the real properties at issue, in the amount of Eleven Thousand Four Hundred Ninety-Two Dollars and Seventy-Two Cents (\$11,492.72). See Chicago Truck Drivers v. Brotherhood Labor Leasing, 207 F.3d 500, 504-05 (8th Cir. 2000) (party seeking civil contempt bears the burden of proving by clear and convincing evidence that the alleged contemnor violated a court order). The Court further finds that defendants did not establish that they were unable to comply with the Consent Order Appointing Receiver, that their inability to comply was not self-induced, or that they made in good faith all reasonable efforts to comply. See id. (when that initial burden is met, the burden shifts to the defendant to show an inability to comply with the Court's order).

To compel compliance with the Consent Order Appointing Receiver, the Court will order that Mr. Parrish be incarcerated until such time as the defendants comply with the terms of the Consent Order Appointing Receiver. The order of incarceration will be held in abeyance, provided that defendants turn over to the Receiver the sum of \$11,492.72 no later than **December 16, 2013 at 12:00 p.m.** PNC Bank's counsel shall promptly advise the Court in writing as to the defendants' compliance with the terms of this Order. This matter is set for hearing on **December 17, 2013 at 2:00 p.m.** in Courtroom 3-North. The Court may cancel the hearing if PNC Bank notifies it that defendants have complied fully and timely with this Order. Absent further order of the Court, the parties shall appear at the hearing as scheduled, and Mr. Parrish should be prepared to be taken into the custody of the United States Marshal at that time.

The Court will also deny defendants' Motion to Enforce Settlement, based on defendants' admission on the record that the alleged settlement offer contained a contingency.

Accordingly,

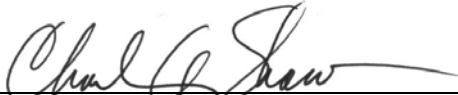
IT IS HEREBY ORDERED that plaintiffs' motion for order to show cause why the defendants should not be held in contempt of Court is **GRANTED** as set forth herein. [Doc. 64]

IT IS FURTHER ORDERED that defendants shall turn over to the Receiver, S&H Equities, LLC, the sum of Eleven Thousand Four Hundred Ninety-Two Dollars and Seventy-Two Cents (\$11,492.72) no later than **12:00 noon** on Monday, **December 16, 2013**.

IT IS FURTHER ORDERED that plaintiff PNC Bank, National Association, shall promptly notify the Court in writing as to the defendants' compliance with the terms of this Order.

IT IS FURTHER ORDERED that this matter is set for hearing on **December 17, 2013**, at **2:00 p.m.** in Courtroom 3-North, at which time the parties shall appear, including defendant Steven D. Parrish in person, absent further order of the Court.

IT IS FURTHER ORDERED that defendants' Motion to Enforce Settlement is **DENIED**



CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 5th day of December, 2013.